

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ISABEL VALENCIA-PEREZ,

Plaintiff,

v.

DARYL SCHERMERHORN, in his  
individual capacity and "JANE DOE"  
SCHERMERHORN, as a marital  
community; STEVEN MALPEZZI, in  
his individual capacity and "JANE DOE"  
MALPEZZI, as a marital community;  
THE UNITED STATES OF AMERICA,

Defendants.

No. C 08-0920 RSM

**STIPULATION AND AGREEMENT  
FOR COMPROMISE SETTLEMENT  
AND RELEASE; ORDER**

THE PARTIES AND THEIR ATTORNEYS OF RECORD HEREBY SUBMIT THE  
FOLLOWING STIPULATION AND AGREEMENT FOR COMPROMISE SETTLEMENT  
AND RELEASE (the "Stipulation and Agreement"):

1. This Stipulation and Agreement is entered into by and between plaintiff Isabel  
Valencia-Perez ("Plaintiff") and defendants Daryl Schermerhorn, in his individual capacity and  
"Jane Doe" Schermerhorn, as a marital community; Steven Malpezzi, in his individual capacity  
and "Jane Doe" Malpezzi, as a marital community; and the United States of America (the  
"USA") (collectively, "Defendants").

STIPULATION AND AGREEMENT FOR COMPROMISE SETTLEMENT AND RELEASE; ORDER  
Case No. C 08-0920 RSM

2. The parties to this Stipulation and Agreement do hereby agree to settle, compromise and dismiss the above-captioned action (“This Action”) under the terms and conditions set forth herein.

3. The USA will pay Plaintiff the sum of Forty-eight thousand dollars and no cents (\$48,000.00), which shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the facts, circumstances, subject matter or allegations that gave rise to the above-captioned lawsuit, for which Plaintiff or his heirs, executors, administrators or assigns, and each of them, now have or may hereafter acquire against Defendants or Defendants' agents, servants or employees.

4. This Stipulation and Agreement is entered into by all parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation. This Stipulation and Agreement is not, is not intended to be, and should not be construed as, an admission of liability, fault, wrongdoing, or violation of law, rules, or regulations on the part of Defendants or any of their predecessor or current agencies, employees, agents, attorneys, successors or assigns.

5. This Stipulation and Agreement may be pled as a full and complete defense to any action or other proceeding that arises out of the claims released and discharged by this Stipulation and Agreement, and/or the facts, circumstances, subject matter or allegations giving rise to those claims, which are also released and discharged by this Stipulation and Agreement.

6. It is also agreed, by and among the parties, that the settlement amount of Forty-eight thousand dollars and no cents (\$48,000.00) to be paid by the USA to Plaintiff represents the entire amount of the compromise settlement and that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by Plaintiff will be paid out of the settlement amount and not in addition thereto. Neither Plaintiff nor any of his

attorneys may make any additional claim for attorney's fees or other costs against Defendants or Defendants' agents, servants or employees.

7. Payment of the settlement amount will be made by a check payable to "Davies Pearson, P.C." The check will be delivered to Plaintiff's attorney at the following address:

Joseph M. Diaz  
Davies Pearson, P.C.  
920 Fawcett Avenue  
P.O. Box 1657  
Tacoma, Washington 98401

8. Plaintiff and his attorneys are responsible for payment of any taxes that may be due on the settlement proceeds. Defendants make no representation as to any tax consequences or liabilities Plaintiff or his attorney may incur as a result of this settlement. Defendants will not withhold any taxes of any kind. The determination of Plaintiff's tax liability, if any, is a matter solely between Plaintiff, his attorneys, the IRS and/or state and local tax authorities.

9. In consideration of the payment referred to in paragraphs 3 and 6 above, Plaintiff agrees that he will, immediately upon execution of this Stipulation and Agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss with prejudice all claims that were asserted or could have been asserted in This Action. The fully-executed Stipulation of Dismissal will be held by counsel for Defendants and will not be filed with the Court until payment of the sum referenced in paragraphs 3 and 6 herein is made. Plaintiff is advised that settlement checks are sometimes not available for up to sixty (60) days after approval of the settlement by the Court.

10. In consideration of the payment referred to in paragraphs 3 and 6 above, Plaintiff hereby releases and forever discharges Defendants and any and all of Defendants' predecessor and current agencies, officials, employees, agents, attorneys, successors and assigns from any and all obligations, damages, liabilities, actions, causes of actions, claims and demands of any kind and nature whatsoever, whether suspected or unsuspected, arising at law or in equity,

1 arising from or by reason of any and all known, unknown, foreseen or unforeseen injuries, and  
2 the consequences thereof, resulting from the facts, circumstances, subject matter or allegations  
3 that gave rise to This Action.

4 11. The parties agree that this Stipulation and Agreement is intended to be a full and  
5 final settlement of all claims arising out of the allegations set forth in Plaintiff's pleadings in  
6 This Action. Plaintiff agrees to indemnify and hold harmless Defendants from any and all  
7 claims, demands, obligations, liens, and lawsuits brought against Defendants, their agencies or  
8 employees on account of the same subject matter that gave rise to This Action.

9 12. This Stipulation and Agreement shall constitute the entire agreement between the  
10 parties, and it is expressly understood and agreed that the agreement has been freely and  
11 voluntarily entered into by the parties hereto with the advice of counsel, who have explained the  
12 legal effect of this Stipulation and Agreement. The parties further acknowledge that no  
13 warranties or representations have been made on any subject other than as set forth in this  
14 Agreement. This Stipulation and Agreement may not be altered, modified or otherwise changed  
15 in any respect except by writing, duly executed by all of the parties or their authorized  
16 representatives.

17 13. The parties agree that, should any dispute arise with respect to the implementation  
18 of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue his  
19 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce this  
20 Stipulation and Agreement in district court. The parties agree that the district court will retain  
21 jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this  
22 Stipulation and Agreement.

23 14. Each party acknowledges that he/she/it has been represented by and has relied  
24 upon independent counsel in negotiating, preparing and entering into this Stipulation and  
25 Agreement and that each party has had the contents of this Stipulation and Agreement fully  
26 explained by counsel and that each party is fully aware of and understands all of the terms of the

1 Stipulation and Agreement and the legal consequences thereof. It is further acknowledged that  
2 the Parties have mutually participated in the drafting of this Stipulation and Agreement and it is  
3 agreed that no provision herein shall be construed against any party hereto by virtue of the  
4 drafting of this Stipulation and Agreement.

5 15. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or  
6 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in  
7 any way be affected or impaired thereby.

8 16. This Stipulation and Agreement may be executed in counterparts by the parties  
9 hereto, each of which shall be deemed an original, and which together shall constitute one and  
10 the same instrument, having the same force and effect as if a single original had been executed  
11 by all parties. The parties agree to accept facsimile transmission signatures and PDFs  
12 transmitted by e-mail as though they were original signatures on this document.

13 17. The persons signing this Stipulation and Agreement warrant and represent that  
14 they possess full authority to bind the persons on whose behalf they are signing to the terms of  
15 this Stipulation and Agreement.

16 SO STIPULATED.

17 Respectfully submitted,  
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19 DATED:

20 \_\_\_\_\_  
ISABEL VALENCIA-PEREZ  
21 Plaintiff  
22

23 DATED:

24 \_\_\_\_\_  
JOSEPH M. DIAZ  
Davies Pearson, P.C.  
25 Attorney for Plaintiff  
26

1 JOSEPH P. RUSSONIELLO  
2 United States Attorney

3 DATED:

4 \_\_\_\_\_  
5 NEILL T. TSENG  
6 Assistant United States Attorney  
7 Attorneys for Defendants

8 DATED:

9 \_\_\_\_\_  
10 DARYL SCHERMERHORN  
11 Defendant

12 DATED:

13 \_\_\_\_\_  
14 STEVEN MALPEZZI  
15 Defendant

16 **APPROVED AND SO ORDERED.**

17 DATED: November 12, 2009.

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20 RICARDO S. MARTINEZ  
21 UNITED STATES DISTRICT JUDGE  
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